

for a hearing unless another date and time is otherwise agreed to by the parties. If Respondent does not request a hearing and none is ordered by the Secretary within ten (10) days after the date of service of this Order, this Order will become final as to Respondent by operation of law. If a hearing is requested or ordered, the Secretary, after notice of opportunity for hearing to Respondent, may modify or vacate this Order or extend it until final determination.

1. GROUNDS. The grounds for the issuance of this Order are that Respondent engaged in conduct in violation of O.C.G.A. § 10-14-17.

2. REQUEST FOR HEARING. Pursuant to O.C.G.A. § 10-14-23, this Order may be entered by the Secretary unless Respondent requests a hearing within ten (10) days of receipt of this notice. A request for hearing may be delivered to the attention of Noula Zaharis, Director, Office of the Secretary of State, Securities and Charities Division, 2 Martin Luther King Jr. Dr., SE, Suite 317 West Tower, Atlanta, GA 30334 or by electronic mail at nzaharis@sos.ga.gov.

3. PROCEDURE FOR REQUESTING A HEARING. If the Respondent requests a hearing, the request for hearing must be in writing and contain the following information as required by Rule 590-3-1-.05 of the Rules of Office of Secretary of State (hereinafter, the "Rule" or "Rules"):

- a title which indicates the nature of the proceedings;
- the complete name and address of the person or persons on whose behalf the request is filed;
- the name and address of all other persons known to have a legal interest in the proceedings;
- if the person or persons on whose behalf the request is filed are represented by counsel, the name and address of counsel;
- a clear and concise statement of the facts upon which the contested case arises;
- a prayer setting forth the relief sought; and
- a statement of the grounds upon which the person contends he is entitled to the relief sought.

4. SCHEDULING OF HEARING. If requested, a hearing will be scheduled before a Hearing Officer appointed by the Secretary, the ultimate decision maker in this matter, in no less than fifteen (15) days but not earlier than five (5) days after the request is made, unless otherwise agreed to by the parties.

5. ISSUES TO BE ADDRESSED. If a hearing is requested, the issues to be addressed are set forth in the attached Order that is incorporated herein by reference and made a part of this Notice of Opportunity for Hearing.

6. CONTESTED CASES. This is a contested case proceeding and pursuant to the Rules it shall be conducted as expeditiously as possible, with regard to the rights of the parties, and in a manner to enable the parties to obtain relevant information needed for preparation of the case to the extent that such disclosure is authorized or required by law.

7. LEGAL AUTHORITY AND JURISDICTION. This Notice of Opportunity for Hearing is issued pursuant to O.C.G.A. § 43-17-23, Rule 590-3-1-.05, and O.C.G.A. § 50-13-1 *et seq.* (The Georgia Administrative Procedure Act).

8. INFORMAL CONFERENCE. Respondent may request an informal conference with the Division Director pursuant to Rule 590-3-1-.05. The receipt of a written request for an informal conference will toll, until the date that such conference is scheduled, the running of the time for requesting and setting a hearing. A request for hearing that does not contain the required information as outlined above will be treated as a request for an informal conference. Further information regarding an informal conference may be obtained by contacting Noula Zaharis at (470) 312-2787 or nzaharis@sos.ga.gov.

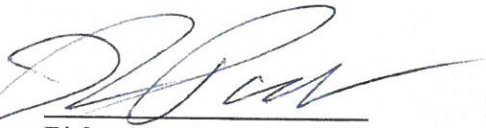
9. RIGHTS OF PARTIES. The parties to this matter shall have all of the rights provided for

in the Act, the Rules and the Georgia Administrative Procedure Act, including but not limited to the following:

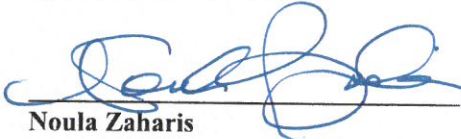
- To subpoena witnesses and documentary evidence;
- To secure testimony by deposition or interrogatories if authorized or directed by the Hearing Officer;
- To be represented by legal counsel; and
- To respond and present evidence on all issues involved.

SO ORDERED this 20th day of July 2021.

BOARD OF CEMETERIANS

By: 
Richard Parker
Chairman

**BRAD RAFFENSPERGER
SECRETARY OF STATE**

By: 
Noura Zaharis
Director
Securities and Charities Division



**OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA
BOARD OF CEMETERIANS**

IN THE MATTER OF

Carroll Memory Gardens, LLC

Respondent.

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Case Number: ENCE-0388

ORDER TO CEASE AND DESIST AND IMPOSITION OF CIVIL PENALTY

This matter comes before the Secretary of State of the State of Georgia ("Secretary") by and through the Board of Cemeterians ("Board") pursuant to the authority granted in O.C.G.A. § 10-14-14, *et seq.* of the Georgia Cemetery and Funeral Services Act of 2000, as amended ("Act"). Whereas, the Secretary undertook an investigation into the acts and practices of Carroll Memory Gardens, LLC. ("CMG," "Respondent," or "Cemetery").

Based on the investigation, the Secretary has found grounds to conclude that Respondent may have engaged in acts or practices constituting violations of the Act. The Secretary has determined it is in the public interest to issue this Order.

Based upon information obtained during the investigation, the Secretary finds as follows:

FINDINGS OF FACT

1. CMG is located at 914 Stripling Chapel Road, Carrollton, Georgia 30116.
2. CMG is registered with the Securities and Charities Division ("Division") as a Perpetual Care Cemetery pursuant to O.C.G.A. § 10-14-3(28). CMG has been registered with the Division since December 7, 2006.

3. CMG lists its Perpetual Care Trust address as 3600 Horizon Blvd, Suite, 100, Feasterville Trevose, Pennsylvania 19053. CMG lists Diana Burkholtz as its Owner/Manager, as well as its Director of Trust.

4. On April 19, 2021, the Securities and Charities Division (“Division”) sent an inspector from the Secretary’s office to inspect the site and report on the condition of CMG’s care and maintenance. The inspector took one hundred seventy-six (176) photos (“Photo(s)”) of the Cemetery and submitted a questionnaire to CMG to address the inspector’s findings. The inspector’s findings are described in detail below.

a. Grounds

5. The inspector identified several issues with the conditions of CMG’s grounds. The inspector reported several bare patches of grass, which contained no sign of treatment, such as the presence of new grass seed, sod, or hay. The inspector also reported that, in various areas of the Cemetery’s grounds, grass needed cutting and that weeds were present throughout the grounds, describing the weeds as “rampant.”

6. The inspector also reported damage caused by vehicles and heavy equipment driving across the grounds. The inspector observed rutted areas in the grounds. The inspector reported that these ruts appeared to be very old and did not bear any evidence of restoration, such as grass growing in the ruts.

7. The Photos provided by the inspector support his findings. The inspector provided one fifty-eight (58) Photos of the grounds. Photos that show large areas of barren and bare grass, which contain no suggestion of restorative efforts, such as grass seed, hay, or sod.

8. The inspector provided one (1) Photo that shows a large rut on grounds, most likely caused by heavy equipment, such as a backhoe. Eighteen (18) photos show grass that has become overgrown and numerous weeds throughout the grounds.

b. Graves

9. The inspector observed some issues with the condition of CMG’s graves. The inspector observed several barren graves with no new grass growing and did not observe grass seed, hay, or sod on any of these graves. Further, the inspector reported a minor degree of sinking of at least one (1) grave.

10. The Photos reflect the inspector's findings. Photos show several graves covered with fill dirt that does not bear grass or show signs of restorative efforts, such as grass seed, hay, or sod. Other Photos show a grave with minor sinking.

c. Headstones, Markers, and Monuments

11. The inspector observed numerous issues with the conditions of headstones, markers, and monuments. The inspector observed that many headstones and markers were unlevel, indicating that they were in the process of sinking. The inspector also observed several markers that were soiled by dirt and mud, concluding that sinking likely contributed to this issue.

12. The inspector also observed that many markers were obscured by overgrown with grass, weeds and ant beds, describing these occurrences as a "rampant issue."

13. Lastly, the inspector reported damage to markers and monuments in the veteran's area of the Cemetery's grounds, including staining and environmental damage. This staining was especially present in the veteran's area sidewalk, which the inspector described as heavily stained with orange mud and residue.

14. Photos provided to the Division support the inspector's findings. Several Photos show markers that are unlevel, indicating sinking. Other Photos show markers soiled in dirt and mud. At least three (3) Photos show markers that are so soiled that the names on them are partially obscured.

15. The inspector provided five (5) Photos of the veteran's area of the Cemetery's grounds. These photos show staining of monuments and the sidewalk surrounding the monuments, as well as minor damage due to weathering.

d. Roadways

16. The inspector reported a number of issues with the condition of the Cemetery's road system. The inspector observed cracks along the sides of the roads out of which grew grass and weeds. Further, the reported that various areas of the road appeared to have worn out, indicating that a long period of time had passed since the roads were last resurfaced. The inspector also observed cracks in the roads throughout the road system and damage throughout the road system's sidewalks, which the inspector described as a potential hazard to patrons. Lastly, the inspector identified evidence of damage to the road drainage system in the form of orange mud staining on the roadways.

17. The Photos support the inspector's findings. Throughout the Cemetery, roads show signs of time-related damage, such as stress fractures and erosion. The Photos also show several small potholes in the road system that have not been addressed with any reparative measures, such as gravel, quick-drying cement, or new asphalt.

18. Other Photos show numerous weeds growing in cracks in the roadways, particularly along the sides of the roads.

19. Two (2) Photos show substantial damage to a walkway cutting through the Cemetery's grounds, resulting in uneven cement that poses a risk of injury to Cemetery visitors. In one section of the walkway the damage is so severe that the walkway appears to have completely eroded.

e. Questionnaire

20. As a part of his inspection, the inspector submitted a questionnaire to CMG prepared by Division. The questionnaire requested information regarding what systems, if any, CMG has in place for the purpose of processing complaints by the Cemetery's visitors as well as what systems, if any, the Cemetery uses for logging and addressing care and maintenance work orders.

21. On April 24, 2021, CMG provided a sworn statement in response to the Division's questionnaire. CMG stated that the Cemetery does not have a written procedure for addressing customer complaints. According to CMG, complaints are received by family service counselors or administrators who meet with the family complaining to fix the problem. If work needs to be done, the service counselor or administrator will write up a work order which is logged in the CMG system. If materials are present on the property, CMG states the complaint is addressed within 3-7 work days. If the necessary materials are not present on the property, CMG states the issue is addressed within 3-7 days of the delivery of those materials to the Cemetery. Once the work is completed, maintenance signs the work order and it is returned to the family service counselor or administrator who received the complaint, who then contacts the original complainant to inform them that their concern has been addressed. A copy of this signed order is then saved in the family's file and the CMG system log is updated to show the work is complete.

22. In response to the Cemetery's current care and maintenance conditions, CMG stated that it ordered sod for recent burials. CMG further stated that it is working with its marker vendor to level markers that require it. CMG also stated that the grounds are mowed and treated for weeds regularly, but did not disclose the time interval between treatments.

23. CMG further stated that it fixes any markers it damages and will fix any markers that are identified as having been damaged as soon as the Cemetery is made aware that a marker is damaged. CMG concluded by stating, “continued maintenance is a constant process at the Cemetery, and the Cemetery works diligently to address all issues as soon as possible as they arise.”

CONCLUSIONS OF LAW

24. Paragraphs 1 through 23 are incorporated by reference as though fully set forth herein.

25. The Secretary has jurisdiction over this matter pursuant to the Act. *See* O.G.C.A. §§ 10-14-14 and 10-14-19.

26. Pursuant to O.C.G.A. § 10-14-19(a)(1) of the Act, if the Secretary determines:

that any person has engaged in, or is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter or by any rule, regulation, or order of the Secretary of State promulgated or issued pursuant to any Code section of this chapter or which is declared to be unlawful under this chapter, the Secretary of State may...[i]ssue an order, if he or she deems it to be appropriate in the public interest or for the protection of consumers, prohibiting such person from continuing such act, practice, or transaction, subject to the right of such person to a hearing as provided in Code Section 10-14-23.

27. Pursuant to O.C.G.A. § 10-14-19(f) the Secretary is authorized to impose a “civil penalty not to exceed \$10,000.00 for a single violation and not exceeding \$100,000.00 for multiple violations in a single proceeding or a series of related proceedings.”

28. Respondent CMG is registered with the Division as a perpetual care cemetery pursuant to O.C.G.A. § 10-14-4. Thus, CMG is subject to discipline under the Act.

29. Pursuant to O.C.G.A. § 10-14-17(i), “[i]t shall be unlawful for any owner or operator of a perpetual care cemetery to fail to provide care and maintenance for the cemetery.”

30. Pursuant to O.C.G.A. § 10-14-3(6):

“Care and maintenance” means the perpetual process of keeping a cemetery and its lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums columbaria, vaults, crypts, utilities, and other improvements, structures, and embellishments in a well cared for and dignified condition, so that the cemetery does not become a nuisance or place of reproach and desolation in the community. As specified in the rules of the Secretary of State, care and maintenance may include, but is not limited to, any or all of the following activities: mowing the grass at reasonable intervals; raking and clearing the grave spaces and adjacent areas; pruning of shrubs and trees;

suppression of weeds and exotic flora; and maintenance, upkeep, and repair of drains, water lines, roads, buildings, and other improvements. Care and maintenance may include, but is not limited to, reasonable overhead expenses necessary for such purposes, including maintenance of machinery, tools, and equipment used for such purposes. Care and maintenance may also include repair or restoration of improvements necessary or desirable as a result of wear, deterioration, accident, damage, or destruction. Care and maintenance does not include expenses for the construction and development of new grave spaces or interment structures to be sold to the public.

31. Respondent CMG has failed to provide for care and maintenance for the Cemetery. CMG has not provided landscaping for the cemetery grounds, including failing to properly treat the grounds for weeds and failing to properly mend barren areas in the grass. CMG has failed to take the proper measures to correct these care and maintenance issues.

32. CMG has further failed to provide for care and maintenance for the Cemetery by failing to repair and mend the ground from damage caused by heavy equipment.

33. CMG has further failed to provide for care and maintenance for the Cemetery by failing to maintain the cemetery's road system and for its failure to repair potholes, fissures, and other deterioration and erosion in the road system. CMG has failed to take the proper measures to correct these care and maintenance issues.

34. CMG has further failed to provide for care and maintenance for the Cemetery by failing to keep its graves in a dignified condition by allowing graves to sink and become bare.

35. CMG's response to the Division's questionnaire does relieve CMG from its responsibility to provide for care and maintenance. CMG admits to not having written policy in place for the purpose of addressing customer complaints.

36. Further, CMG's statement that it is in the process of correcting current issues in the Cemetery's care and maintenance seem insincere in light of CMG history of care and maintenance neglect, and CMG appears to be addressing these issues now only after the Division ordered an inspection of their grounds. As such, CMG has provided the Division and the Board with no reason to believe that it will not continue to ignore its care and maintenance obligation once CMG believes it is no longer under the gaze of the Board's scrutiny.

37. These activities described in paragraphs 31 through 36 are violations of O.C.G.A. § 10-14-17(i). These violations are actionable events pursuant to O.C.G.A. § 10-14-19; therefore, Respondent is subject to discipline.

ORDER

WHEREFORE, by the authority vested in me as the Secretary of State for the State of Georgia, **IT IS HEREBY ORDERED**:

1. That **CARROLL MEMORY GARDENS, LLC** immediately **CEASE AND DESIST** all violations of the Georgia Cemetery and Funeral Services Act of 2000, as amended.
2. **CARROLL MEMORY GARDENS, LLC** pay a **civil penalty** in the amount of forty thousand dollars (\$40,000.00).
3. **CARROLL MEMORY GARDENS, LLC** remit payment of the Secretary's **cost of investigation** in the amount of one thousand five hundred dollars (\$1,500.00) to the Secretary due within thirty (30) days of the entry of a Final Order by the Secretary.

The entry of the Order is deemed to be in the public interest and shall not be deemed to constitute findings or conclusions relating to other persons unrelated to Respondent and shall not be deemed to be a waiver or estoppel on the part of the Secretary from proceeding in individual actions against any person who may have violated the Act or any transactions not specifically referred to herein or not known to the Secretary at the time this Order was issued.

SO ORDERED this ____ day of ____ 2021.

BOARD OF CEMETERIANS

BRAD RAFFENSPERGER
SECRETARY OF STATE

By: _____
Richard Parker
Chairman

By: _____
Noula Zaharis
Director
Securities and Charities Division